



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Joseph Horwedel
Kim Walesh

SUBJECT: SEE BELOW

DATE: November 25, 2013

Approved

Date

12/4/13

SUBJECT: MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY AND ISTAR SAN JOSE, LLC, FWSH PARTNERS II, LLC AND EARTHQUAKES REAL ESTATE RELATED TO DEVELOPMENT OF THE ISTAR PROPERTY AT HWY 85 AND COTTLE ROAD AND THE EARTHQUAKES SOCCER STADIUM.

RECOMMENDATION

Approve a non-binding Memorandum of Understanding with iStar San José, LLC, FWSH Partners II, LLC and Earthquakes Real Estate to explore and negotiate a Development Agreement for development of the iStar Property at Hwy 85 and Cottle Road with up to 720 homes, 24.5 acres of employment uses and significant retail user over 100,000 square foot, and a 4.2 acre fully improved park site, which development would finance construction of enhancements to the Earthquakes' professional soccer stadium at 1125 Coleman Avenue.

OUTCOME

Approval of the proposed non-binding Memorandum of Understanding (MOU) will guide the preparation of a Development Agreement for the proposed iStar project and the Earthquakes Soccer Stadium project.

BACKGROUND

iStar owns an approximately 78 acre parcel located in Edenvale immediately adjacent to the Hitachi development located between Cottle Road, Monterey Road and Hwy 85. The iStar site currently has a General Plan land use designation of Combined Industrial Commercial and Industrial Park. The property could incorporate commercial, industrial and research and development.

In 2008, the City completed an extensive master planning effort with Hitachi Global Systems Technology, Inc. to integrate, retain, and consolidate existing employment opportunities for manufacturing and add and integrate high density housing, retail and public open spaces. The City attempted to include the iStar site in the original Hitachi master planning effort but suspended those efforts due to limited interest by the property owner at that time. Subsequent planning efforts resulted in the designation of the Hitachi campus as an Urban Village in the Envision San José 2040 General Plan.

Over the past several years, FWSH, iStar and the Earthquakes have worked with Planning staff to ensure a quality, pedestrian oriented project that creates neighborhoods adjacent to transit, parks and public amenities such as bike trails. The project is designed to provide easy access to both Caltrain and light rail to facilitate ridership. The developers also attracted a major retailer by lowering the land cost for the site. Such financial underwriting was imperative since access to the site is challenging. Finally the site plan is designed to accommodate approximately 200,000 square feet of offices uses or additional retail. The developers will further assist in lowering the eventual cost of the office site by providing the needed site infrastructure upfront including sewer, water and roadway components.

The proposed development would require a General Plan amendment, a Development Agreement, a rezoning of the property and an amendment to the Edenvale Area Development Policy. The Edenvale Area Development policy would be updated to accommodate the mixed-use development onsite and redistribute a portion of the existing entitlements from the project site to other locations in the policy area. An Environmental Impact Report for the proposed project is currently underway.

The proposed development achieves major objectives of both the Envision 2040 General Plan and the City's Economic Strategy. First the project advances important job and revenue goals sited in GP2040 along with creating the type of housing envisioned in GP2040. Second the proposed development seeks to apply revenues from the iStar development to the completion of the Earthquakes Soccer Stadium already permitted and under construction located on Coleman Avenue. Development of the state-of-the-art Major League Soccer Stadium is a priority goal in the City's Economic Strategy.

In June of 2012 the developers purchased the soccer site and in 2013 stadium construction began. The Earthquakes have a long history in San José as one of the earliest and most successful national soccer teams. More people play soccer in the Bay Area than anywhere else in the nation as soccer has become the world's game and San José/Silicon Valley is arguably the most diverse place in the country. The Earthquakes will celebrate their 40th Anniversary in March of 2014 shortly before "coming home" to play in the new Earthquake's stadium.

Approximately \$10,000,000 generated through the development of the iStar site will be applied to enhance four elements of the basic stadium design, including an upgraded riser and seating system that will enhance the fan experience and ensure the stadium is a quieter neighbor to the housing adjacent to the site. The exterior of the stadium will be upgraded with a distinctive terracotta finish or similar exterior that will make the stadium an iconic addition to San José's

landscape appropriate to the nation's 10th largest City. Additional funds will also go to improve the refreshment area and further enhance the fan experience. If the iStar development proceeds, additional funds from the development will support affordable housing and transportation improvements previously the responsibility of the former Redevelopment Agency.

FWSH and the Earthquakes are privately funding stadium construction. Current costs for the 18,000 seat stadium exceed \$70,000,000. Soccer stadium development throughout the country is largely dependent on the use of municipal bond funding. Private funding of soccer stadiums is rare due to the high cost of stadium construction and relatively low revenues generated through ticket and sponsorship dollars.

The analysis below outlines the obligations of the parties in the MOU between the City of San José, iStar, FWSH Partners and the Earthquakes.

ANALYSIS

The developers of the proposed iStar project and the Earthquakes Stadium (iStar, FWSH, Earthquakes) request that Council approve the attached non-binding MOU that is the precursor to a Development Agreement to be negotiated and brought forward for City Council consideration with the associated General Plan Amendment, Amendment to the Edenvale Area Development Plan, Environmental Impact Report, and rezoning for the property. Staff anticipates the project would be before Council in April or May of 2014.

The MOU represents the intent of the parties to prepare an innovative public/private partnership that can simultaneously accomplish many City goals including advancing General Plan 2040 in creating the type of walkable neighborhoods with retail and office jobs, park and bikeway amenities that are transit supportive. The project will also support one of the City's top Economic Strategy goals, the completion of a first-class stadium for the Earthquakes Major League Soccer Stadium.

The terms identified in the MOU ensure that the stadium enhancements, and the large format retail and infrastructure for the future office use on the iStar site are completed prior to completion of residential development on the iStar site. Additional security is to be provided by the Developers in the form of irrevocable letters of credit or completion guaranty at the City's option. The Developers will also make a \$6,000,000 contribution to the development of the Blossom Hill Hwy 101 freeway interchange.

The information below highlights the substantive understandings of the City and the developers for the proposed terms of a Development Agreement as described in the proposed MOU for the iStar property.

DEVELOPMENT AGREEMENT

Parties – City, iStar, FWSH and Earthquakes Real Estate.

Term – 10 years unless terminated modified or extended by mutual consent of the Parties.

Subject Property – The iStar Site and Stadium Site shall be subject to the Development Agreement.

Vested Rights – Developers shall have vested rights to plan, configure, process and entitle the maximum intensity or density of uses as they shall be established in accordance with the PD Zoning standards.

Future Discretionary Approvals – The City shall work cooperatively with the Developers to duly process applications for future discretionary approvals consistent with the Vested Components.

DEVELOPER'S OBLIGATIONS

Stadium Site – Earthquakes Real Estate shall construct or cause the construction of the Stadium with the Stadium Enhancements. Earthquakes Real Estate shall obtain a Planned Development Permit Adjustment incorporating the Stadium Enhancements. Prior to the approval of a subdivision map for any residential development of the iStar site, Earthquakes Real Estate shall submit complete applications for and obtain all required building permits for the construction of the Stadium with the Stadium Enhancements.

iStar Site – Prior to the approval of a subdivision map for any residential development of the iStar site, Developers shall submit complete applications for and obtain all required building permits for the construction of a major retail use of approximately 125,000 square feet and the Stadium Enhancements. The Developers shall complete the building permit for the shell of the Major Retail Use prior to the issuance of the certificate of the occupancy of the 100th residential unit on the iStar Site.

Prior to the issuance of the building permits for the last phase of the residential development on the iStar Site, the Developer shall stub out all infrastructure, including but not limited to water, sewer, roadway and power necessary for the retail and office use on the iStar site. The intent is to ensure that the future office development proceed efficiently and in a cost effective manner.

Security for Stadium Enhancements – In order to ensure that the Stadium Enhancements are completed by the Developers in a timely manner, the Developers shall provide security at the option of the City of either (a) one or more irrevocable letters of credit in the sum equal to the value of the Stadium Enhancements or (b) a completion guaranty in a form acceptable to the City.

Traffic Infrastructure – Developers agree to pay to the City by wire transfer a contribution in the total amount of \$6,000,000 to defray the cost of transportation improvements at the interchange of US 101/Blossim Hill/Silver Creek Valley Road on or before the first Certificate of Occupancy of any residential unit on the iStar site is issued.

No City Funds – No City funds shall be expended on development or construction of either the iStar or Stadium Site.

ROUTE 101 INTERCHANGE IMPROVEMENTS AT BLOSSOM HILL ROAD

Improvements to the Route 101 interchange area at Blossom Hill Road are necessary for development of the Hitachi/iStar area. This project has an estimated cost of \$22,000,000 and includes improved traffic capacity and an enhanced bicycle and pedestrian connection between the Urban Village area and the Coyote Creek trail corridor. A total of \$11,500,000 in development contributions have been allocated to 101/Blossom Hill project (including the proposed \$6,000,000 from iStar), leaving a \$10,500,000 funding shortfall for the project.

The former Redevelopment Agency had committed in a Development Agreement with Hitachi to make a significant contribution for construction of the improvements. As Agency funds are no longer available, staff proposes that City funds bridge the remaining \$10,500,000 shortfall. Depending on available revenue sources, the funding gap could be filled with the use of City transportation related funds and revenues generated from the development. Staff will bring forward further information and analysis of potential funding alternatives for the 101/Blossom Hill improvements in April or May of 2014 as part of the over all packet for Council consideration.

AFFORDABLE HOUSING IN-LIEU FEES

In addition to the terms identified above, the iStar developers are working with the City's Housing Department to support affordable housing through payment of the in-lieu fee. The project is in a Redevelopment Project area. Payment of in-lieu fees are not proscribed by the MOU, but part of standard inclusionary housing requirements. Staff anticipates the contribution by the developer for affordable housing will be in an amount up to \$13,500,000 in accordance with existing City policy.

EVALUATION AND FOLLOW-UP

Staff anticipates bringing the General Plan Amendment, Development Agreement, and Zoning, and forward for Council consideration in April or May of 2014.

PUBLIC OUTREACH/INTEREST

- ☐ **Criterion 1:** Requires Council action on the use of public funds equal to \$1,000,000 or greater. **(Required: Website Posting)**
- ☐ **Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- ☐ **Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This action does not meet any of the criteria specified above, but will be posted on the City's website for public review for the December 17, 2013 agenda.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office; the Department of Transportation, the Housing Department and the City Manager's Budget Office.

FISCAL IMPACT

As described above, the proposed \$6,000,000 contribution from iStar still leaves a gap of \$10,500,000 to fund the Route 101 interchange improvements at Blossom Hill Road. As Agency funds are no longer available, staff proposes that City funds bridge the remaining \$10,500,000 shortfall. Depending on available revenue sources, the funding gap could be filled with the use of City transportation related funds and revenues generated from the development. Staff will bring forward further information and analysis of potential funding alternatives for the 101/Blossom Hill improvements in April or May of 2014, as part of the over all packet for Council consideration.

HONORABLE MAYOR AND CITY COUNCIL

November 25, 2013

Subject: iStar MOU

Page 7

CEQA

Not a Project, File No. PP10-066(g), Memorandum of Understanding. As described above, the proposed action is Council's preliminary direction to enter into a non-binding MOU. This action does not commit the City Council to any particular future decisions related to the iStar Property or the Earthquakes Soccer Stadium. Appropriate environmental review as required by CEQA will be completed to inform those future City Council actions.

/s/

JOSEPH HORWEDEL, DIRECTOR
Planning, Building & Code Enforcement

/s/

KIM WALES
Director of Economic Development
Chief Strategist

For questions please contact Nanci Klein, Deputy Director Economic Development
(408) 535-8184.